



## POLICE DEPARTMENT

The  
City  
of  
New York

MEMORANDUM FOR: Police Commissioner

December 19, 2012

Re: Police Officer Chintua Alozie  
Tax Registry No. 926497  
Citywide Traffic Task Force  
Disciplinary Case Nos. 2010-2261 & 2011-3829

The above-named member of the Department appeared before me on May 23, 2012, charged with the following:

### Disciplinary Case No. 2010 2261

1. Said Police Officer Chintua Alozie, assigned to the Manhattan Transit Task Force, on or about March 10, 2009, while off-duty at a location known to the Department, [REDACTED], having been involved in a police incident, did thereafter fail to promptly notify the Operations Unit, as required.

P.G. 212-32, Page 1, Paragraph 2 Note – OFF DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE

### Disciplinary Case No. 2011-3829

1. Said Police Officer Chintua Alozie, while on-duty and assigned to the Citywide Traffic Task Force, on or about July 15, 2010, was discourteous to a civilian, Person A, to wit: said Police Officer stated to her, “TELL IT TO THE MAYOR!”

P.G. 203-09, Page 1, Paragraph 2 GENERAL REGULATIONS

2. Said Police Officer Chintua Alozie, while on-duty and assigned to the Citywide Traffic Task Force, on or about December 9, 2010, was discourteous to Sergeant Pamela Mortis, tax# 904628, to wit: said Police Officer stated: ‘This is bullshit! You know this won’t fly! You must have a problem with me! If you give me a complaint, I will give you one too! Get away from me!’ and made a gesture with his hands for Sergeant Mortis to get away from him.

P.G. 203-09, Page 1, Paragraph 2 GENERAL REGULATIONS

3. Said Police Officer Chintua Alozie, while on-duty and assigned to the Citywide Traffic Task Force, on or about and between November 30, 2010 and March 18, 2011, was late for roll call on nine (9) occasions, causing entries to be made in the Minor Violations Log.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT  
GENERAL REGULATIONS

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Guilty in Disciplinary Case No. 2010-2261, in Specification No. 3 in Disciplinary Case No. 2011 3829 and testified in mitigation of the penalty. Respondent entered a plea of Not Guilty in Specification Nos. 1 and 2 in Disciplinary Case No. 2011 3829. A stenographic transcript of the hearing record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2010-2261

Respondent having pleaded Guilty, is found Guilty.

Disciplinary Case No. 2011-3829

Respondent having pleaded Guilty to Specification No. 3 is found Guilty of Specification No. 3. Respondent is found Not Guilty of Specification No. 1, and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeants Robert Conroy and Pamela Mortis as witnesses.

Sergeant Robert Conroy

Conroy has been a member of the Department for just short of 25 years. He has been working in his current command, the Taxi Unit, for eight years, since March 2004. He is in charge of the Taxi Unit, which investigates and addresses taxicab violations and hazardous violations and enforces the rules pertaining to taxicabs.

On July 22, 2010, Conroy received a complaint involving Respondent and allegations of a disputed summons, and courtesy. To investigate the complaint, Conroy first attempted to speak with the complainant, Person A. At first, despite calling her numerous times, Conroy could not get in touch with her so he sent a certified letter. When Conroy finally spoke with Person A, she described her unhappiness at (the taxicab she was in) being pulled over (by Respondent) when she was just trying to get home. Conroy believed that Person A could not accept the fact that she would not get home at the time she wanted. Conroy testified that Person A said she made a statement to Respondent about how can cab drivers make a living with all the restrictions in the City and Respondent replied by saying, "Tell it to the Mayor."

After speaking with Person A, Conroy interviewed Respondent. According to Conroy, Respondent could not remember Person A or whether he had said anything to this particular complainant. Conroy confirmed that he had confronted Respondent about whether he had ever made this statement. Respondent told Conroy that he had.

As part of the investigation, Conroy also examined Respondent's Activity Log and the summons that was written. Conroy determined that the summons was issued correctly and within the guidelines of Respondent's job and as a result of this, he unsubstantiated the allegation against Respondent regarding a disputed summons. Conroy substantiated the allegation of courtesy because this was a complaint made by

a complainant, Person A, that Respondent admitted to saying it, and because he found it to be improper. To clarify, Conroy stated that Respondent admitted to making this statement in the past, however, he did not recall anything about this specific instance. Conroy confirmed that he determined Respondent's statement to be misconduct.

During cross-examination, Conroy confirmed that one of the responsibilities of an officer in Manhattan Traffic Task Force (MTTF) is to keep traffic moving throughout the City. He confirmed that this was a big deal, which was why about 200 officers were assigned to this task. He further confirmed that officers are placed in strategic locations throughout the City to ensure that things do not get backed up. Conroy agreed that all it would take would be one double-parked vehicle, or one person making an illegal turn, and the effects could reach a mile away.

Conroy believed that this complaint came through the 311 system and was subsequently assigned to him by one of his supervisors. He did not receive the complaint on the same day that it was made, and did not remember the exact day that he received it. He acknowledged that one of the things he would have done upon receiving the complaint was to call the complainant. He admitted that in this investigation, he went to the location to determine whether it was a legitimate summons. He both went there and knew the area very well. He did not remember the amount of times he spoke with Person A, but estimated it to be about two or three times. Conroy confirmed that while this was not a lengthy case, he did have to contact the complainant.

Conroy acknowledged that when he spoke with Person A, her initial allegation was simply that the driver of the cab she was in had been given an unlawful summons. However, he at some point explained to her that it was a legitimate summons, because one is not allowed to turn there. Conroy confirmed that Person A's response was that she

had no idea it was illegal and she went on to wonder how a taxi driver can make a living with all the regulations. Conroy stated that Person A's main concern was that she wanted to "get where she had to go" and that she was unhappy with the detours. Additionally, Conroy admitted that it seemed as though Person A felt bad for the taxi driver. He stated that in Person A's statement, she said she thought her taxi driver was a nice guy and should not have received the summons. Conroy admitted that Person A had told her that the taxi driver knew she was in a hurry to get home and therefore tried to get her home as fast as he could. Conroy did not remember whether Person A had been the one who told her taxi driver to make the turn.

Conroy agreed that at some point after he informed Person A that the summons was legitimate, she accepted it. Conroy confirmed that he asked Person A whether or not Respondent's comment "Tell it to the mayor," offended her. Conroy stated that Person A's reply was "No," because all she wanted to do was help her taxi driver who was a nice man and who was trying to get her home as fast as he could. Conroy agreed that even though Person A directly indicated to him that she was not offended by Respondent's remark, he still substantiated the case because he felt that the statement was inappropriate. Conroy acknowledged that it would be normal for him to substantiate a complaint against a police officer when the person making the complaint is not offended; particularly in this case, because when asked whether he made this statement, Respondent's comments led Conroy to believe that he did make the statement.

Conroy did not know whether or not Respondent remembered the incident, only that Respondent did not remember the complainant. He confirmed that he did not show Respondent a picture of her or anything else to refresh his recollection. He only went to him and asked him about a time that he had issued a summons.

Conroy acknowledged that writing summonses to taxicabs was not an unusual task for members of Respondent's unit. He confirmed that this was what Respondent basically did in that unit. He confirmed that he did not do an official Department interview, only questioned Respondent on his own, in more of an informal-type inquiry.

Conroy stated that he considered Respondent's statement to be improper. When asked whether a better response would have been, "write a letter to the mayor," Conroy said that it depends how the comment is put into context, although he believed that this could be taken a bit differently. He agreed that in this city one is allowed to write letters to the Mayor. Additionally, he confirmed that the Mayor and Police Commissioner have open policies where one can write a letter to them at any time.

Conroy acknowledged that because Person A had put Respondent's comment in her original complaint, he assumed she was unhappy with it and therefore had to investigate whether or not the comment was inappropriate. However, he agreed that upon investigation, Person A said that the comment did not bother her. He also agreed that there was nothing wrong with the mechanism of writing a letter.

Conroy confirmed that if one wanted to make an allegation against the Department, there were a number of methods available such as calling 311, CCRB, IAB, walking into any precinct, or even finding any uniformed member of the service and telling him or her that they would like to make a complaint against another officer and they would be required to refer it along the way. He acknowledged that officers themselves do not create the laws, do not make the signs that are up saying where one can and cannot make a turn. He agreed that in this instance Respondent was taking a legitimate action against the cab driver and Respondent had no reason to be speaking with the passenger. When asked whether completely ignoring the passenger, who was

not driving, would be misconduct if the passenger complained about it, Conroy said that he would question the officer about it. He confirmed that this was a sort of "can't win" situation for the officer.

If an officer were arresting someone on the street and people approached the officer, telling him to leave the person who he was arresting alone, Conroy stated that the officer would have to handle the situation.

Conroy clarified this to say that every situation is different, if it was possible for the officer to speak to the people then he should, if it was not, then he should not.

Conroy agreed that there was no allegation that Respondent made Person A exit the taxi. He admitted that Respondent did not really inconvenience Person A any more than her cab being stopped. Therefore, Conroy he was unsure whether or not Respondent had to speak with Person A at all. He acknowledged that there was no allegation that Respondent used curse words against Person A or that he told her to mind her own business. Conroy said that Person A only complained because she thought it was wrong to not allow turns.

Conroy stated that establishing rules on whether or not one could turn was a function of the Department of Transportation or the Mayor's Office. When asked whether if one has a complaint about a sign or rule in the City, it would be wrong to tell that person to get in contact with the Mayor's Office in regard to it, Conroy stated that he believed sometimes it could be.

During redirect examination, Conroy testified that during his almost 25 years with the Department, he has given formal and informal training to members of the service who are below him. He said that as a member of the Traffic Enforcement Division, he has had the occasion to instruct or direct police officers or detectives on what they should when

they encounter civilians in the street. However, he stated that during his 25 years, he has never instructed a member of the service to tell a civilian who is asking him or her a question to “tell it to the Mayor” because he did not think that would be the correct way to go about handling a situation. Conroy stated that he did not know how the comment was said, whether it was said loudly or in a derogatory fashion; all he knew was that the way complainant reacted towards the comment was enough for her to add it to the complaint.

Upon recross-examination, Conroy acknowledged that he does not decide whether or not to substantiate something based on whether the complainant is offended. Conroy agreed that the simple fact that a complaint was made does not mean that Respondent committed a misconduct. He said that he did not substantiate this case solely because a complaint was made—he independently found that the actions of Respondent were misconduct because he felt that Respondent’s statement, even though it did not offend the complainant, was inherently discourteous.

Sergeant Pamela Mortis

Mortis has been a member of the Department for 18 years. She has been assigned to the 106 Precinct for a little over a year. Prior to that, she was assigned to Citywide Traffic Task Force (CTTF) for three years, and then approximately six years as a police officer there. She was also assigned to the Bus Unit as a patrol supervisor. In 2010, at CTTF, she was assigned as a patrol supervisor. Her traffic duties included ensuring that traffic moved smoothly and that officers performed their duties as instructed. As part of her role as patrol supervisor, she visited locations within the Command to ensure that members of the service were performing their tasks correctly.

Mortis stated that there are three separate units within CTTF. The Manhattan Traffic Unit, which dealt mostly with intersections and bridges and tunnels, the Bus Unit and the Taxi Unit.

Mortis was working on December 9, 2010. She was assigned as a patrol supervisor to Fifth Avenue. Her duties were to ensure traffic was moving well and she was assigned to the holiday post, close to the vicinity of Radio City Music Hall. Mortis was operating a marked Radio Motor Patrol Vehicle (RMP) on that day. She was working alone and was in uniform.

Mortis encountered Respondent when she noticed that the traffic in her zone was not moving well. She drove down 53 Street to see what was holding up the traffic. As she was driving through, she noticed that toward the corner, there were several double-parked cars attempting to buy food from a vendor on the corner of 53 Street and Sixth Avenue. She observed that these double-parked cars were obstructing the flow of traffic. At that point, she noticed Respondent in the intersection. She approached him and asked if he could move the double-parked cars. She was still in the RMP at the time, while Respondent was standing in the intersection.

Mortis stated that Respondent spoke “in a very demeaning way” and he stated, “That’s not my job, and I’m not doing that.” She described Respondent’s demeaning manner as being “nasty” towards her, rolling his eyes at her, and sucking his teeth. Mortis could not believe his behavior, so she drove the RMP to the other side of the street, parked it, got out, and approached Respondent on foot. She told Respondent that it was his job and he was disobeying a direct order to move the cars.

Mortis had a discussion with Respondent regarding discipline. She told him that he was disobeying a sergeant and being insubordinate, therefore she was going to issue

him a Command Discipline (CD). Mortis stated that in response to her comments, Respondent said, "This is bullshit" and became more agitated. He told her to "get away by throwing up his hand and batting [her] away."

At this point, Mortis realized that Respondent was out of control. She went back to the RMP and called Lieutenant Witt, and explained the situation to him. She also called Captain Esposito. She stood by and waited for them.

Mortis stated that 53 Street and Sixth Avenue are extremely busy at that time of year. Traffic peaks at times and then dies down. Because of the holiday season, the Department had a program to ensure that traffic moved well around the vicinity of Rockefeller Center.

Mortis testified that Respondent told her that moving the double-parked cars was not his job. Mortis stated that "having worked in Traffic, it was common knowledge that in order to keep the intersection moving smoothly", an officer has to move any double-parked cars or obstructions that might be at the intersection. The police officer assigned to the corner is in charge of the entire intersection, "all four corners." In Mortis's opinion, if Respondent had been assigned to a specific task, that would not preclude him from moving the double-parked cars.

Mortis stated that during her interaction with Respondent he did not communicate any concerns regarding his personal safety to her. Further, she believed that when Respondent raised his hands to gesture her away, it was not for safety reasons but because he was annoyed with her. Respondent told Mortis that if she would give him a CD, he would give her a complaint as well. Around that time, he gestured with his hands for her to "get away" from him.

In December 2010, Mortis had been Respondent's supervisor on more than one occasion. On December 9, 2010, however, she was not his direct supervisor. Officers are assigned to different details, different zones and posts. But the zone for which she was the patrol supervisor was the adjoining zone which was Fifth Avenue. Mortis stated that because she is a sergeant, if she gave Respondent an order, the order is coming from a supervisor.

Mortis spoke with the Captain about this incident. Furthermore, she considered Respondent's actions to be misconduct, and possibly grounds for suspension which was why she contacted the Captain. Mortis was asked if in her 18 years with the Department and her time being a patrol supervisor, if she was aware of any rule that prevented a sergeant from confronting an officer and asking him or her to perform a task, in which she stated, "No."

During cross-examination, Mortis confirmed that as a sergeant, she had the right to give orders to police officers. Mortis agreed that just because she was not his direct sergeant on that date, this did not mean that Respondent did not have to listen to her. Mortis acknowledged that it would not be in the Department's interest to give officers conflicting orders. She agreed that officers have sergeants who they report directly to on any given day, usually the patrol supervisor. She confirmed that it does not mean that someone has a lesser rank, but that officers could look toward their direct supervisor for instructions. She acknowledged that there were approximately 150 to 200 officers working in MTTF when she was assigned to the Unit. She testified that there were approximately ten sergeants assigned to MTTF.

Mortis stated that MTTF covered from about 96 Street down to Battery Park. She acknowledged that one of the goals of MTTF was to keep traffic flowing throughout

Manhattan. Further, she testified that most officers were assigned to writing summonses all the time and some were assigned to traffic posts. In a traffic post, the officer has “a little bit of leeway” if they have to go down the block. She confirmed that there were certain posts where an officer was assigned to, in order to ensure that no vehicles would make an illegal turn down a certain street. She agreed that for an officer to properly man that post he would have to stay there when he was supposed to. The Department expected officers to be at their assigned traffic posts. She acknowledged that if the officer would see something that required police action, he would have to respond to it.

Mortis said that she did not know how many people were assigned to the Bus Unit when she was assigned there. She did not conduct the Roll Call, even though she looked at it. She confirmed that Respondent had his own supervisor on the day of the incident. While she had been his direct supervisor on different tours, she was not his direct supervisor on the date of the incident because he was not on her roster.

Mortis testified that she told Respondent, “Can you move the double parkers over there.” She denied ever saying anything along the lines of “Get your head in the game” or “What are you doing out here?”

When asked whether there were officers from Respondent’s unit assigned to deal with double-parked cars, she stated that there was usually a scooter assigned to work in the vicinity.

Mortis acknowledged that the job of the scooter assignment is to deal with double-parked cars. Scooters are supposed to write summonses, ride around in order to supplement what the officers are doing. A scooter officer can be assigned to a two or three wheel scooter. She admitted that sometimes a scooter officer would be assigned to move double-parked cars. She confirmed that Respondent was on foot. She agreed that

although Respondent might have had an RMP assigned to him, his whole purpose was to stand on the street.

She denied Respondent ever telling her that there were scooter assignments to move double parked cars or "I'm not assigned to that, I am assigned to this post here."

Mortis agreed that she was in a vehicle at the time of confrontation. She did not have an operator. She confirmed that she was driving by herself, as was frequently done in MTTF. Mortis testified that Respondent was standing towards the west side of the intersection. She did not know how long he had been assigned to that post prior to that day. She disagreed that it would be fair to say that in MTTF, certain officers would get assigned to a specific location on a daily basis.

When asked whether she ever had a situation where one officer would get one post on a fairly regular basis, she stated that this incident related to a holiday post. For the holidays, one could end up doing a post from November until January. Frequently, an officer could get that post ten times if he were working 30 days. She said that an officer may get the same post several times. Mortis testified that the posts are determined by who created the Roll Call, which was how posts were distributed. Civilian members of the Department do the Roll Call. They would generate a Roll Call and names would be selected. However, she testified, that supervisors could make changes to the Roll Call. She said that she did not know whether or not Respondent had previously been assigned to that particular post before the day of the incident.

Mortis admitted that officers who have the same assignment over and over are expected to have some familiarity with the post that would be assigned to them. She confirmed that this was an advantage to police work which was being in the same place for an extended period of time because one would gain a familiarity with what occurs at

that location. She agreed that this is an advantage because one becomes aware of what problems are likely to develop and one can develop relationships with the community there.

Mortis acknowledged that in a hypothetical situation in Manhattan, if an officer were assigned to a certain area, he should learn when deliveries arrive and when there are drop-offs and pick-ups in order to better manage his assignment. Mortis did not remember Respondent telling her on the day of the incident that the double-park cars were switching food trucks. She stated that Respondent did not attempt to tell her anything to that effect on that day. She acknowledged that she did not know whether any instructions had been given to Respondent by his direct supervisor earlier or whether he had been visited by another supervisor prior to being visited by her.

Mortis admitted that at some point she believed that Respondent's actions were worthy of suspension, although he was not suspended on that day. She confirmed that it was Esposito's decision not to suspend Respondent. Additionally, Respondent was not taken off his post that day and continued to work his assignment. She confirmed that she was officially interviewed by the Department.

Mortis confirmed that at some point during that interaction, when she spoke to Respondent she mentioned to him that she was going to make a complaint against him or take disciplinary action, and in response, Respondent told her that he would possibly make a complaint against her. She stated that officers could make complaints against sergeants, while this would not be a CD type of complaint. To make a complaint against a sergeant, an officer would have to go to someone higher in rank, such as a lieutenant. While they could not make a complaint against a sergeant to a sergeant, Mortis confirmed

that there is nothing wrong with an officer letting a sergeant know that he intends to make a complaint against that sergeant. Mortis agreed that this would not be misconduct.

Mortis acknowledged that at some point after this incident, she prepared a CD for Respondent. She confirmed that at some point, when it was typed up, it was written that she thought Respondent was worthy of a Schedule A CD. However, at some point it was crossed out and written instead that she thought he was worthy of a Schedule B CD. She does not recall filling out whether he was worthy of schedule A or B CD. She confirmed that she had written that she believed what happened on that day was considered courtesy.

During redirect examination, when asked if when she first observed Respondent did he appear to be otherwise engaged in a task that would have prevented him from taking care of the double-parked cars that she alerted him to, Mortis stated, "No, the intersection was pretty clear at that point, and you know, I thought that [Respondent] could just, you know, take a few steps, 20 to 30 feet inside the block, and just clear it up."

During recross-examination, when Mortis was asked regarding her statements about the intersection looking clear and whether the reason why she had approached Respondent was because she had seen cars backing up, she stated that she saw cars backing up Fifth Avenue, so she drove to the next avenue to see what was going on. While there were a few cars at that point, the traffic that was trying to go across town was backing up due to the double-parked vehicles. Mortis stated that Respondent was not engaged in directing traffic at the moment that she approached him, however, she acknowledged that in Manhattan, traffic increases and decreases. She admitted that if she happened to approach a clear intersection, that did not mean the intersection would still be clear for more than a minute or two. She stated that the intersection was clear where

Respondent was so she wanted Respondent to handle a situation on the other side of the intersection.

During redirect examination, Mortis described the location of the double-parked cars as the southeast corner of the intersection, 53 Street and Sixth Avenue. She said that there were approximately six double-parked cars. There were a couple of people in the cars and as she drove through, she honked a couple of times and the cars moved. However, several cars remained at the intersection, about "three cars in from the corner."

Mortis testified that she had observed a food vendor when she arrived and that she believed some of the cars were parked there to get food. She agreed that those were the only cars that she saw that were double parked. She confirmed that she did not see any cars other than the ones trying to buy food from the vendors.

Upon questioning by the Court, Mortis confirmed that in her experience working for the MTTF, there are some posts that officers are assigned to where they have to ensure cars do not make left or right turns. Further, she confirmed that if an officer would be assigned to that type of post, that officer could move from that post in order to make double-parked cars move. The officer would not be permanently stuck to his post.

Mortis clarified that the Command did not have any fixed posts. A fixed post would be in front of a location, such as a house of worship, where the officer would be instructed not to move from. If one would be assigned to a traffic post, he would "have to move here or there."

She confirmed that it was her understanding that if one was working at an intersection, he or she could go down the block and tell the drivers of the double-parked cars to move. Mortis stated that if a supervisor came by and saw the double-parked cars, he would inquire as to why the double parked cars were not moved.

During redirect examination, Mortis testified that her uniform indicated that she was sergeant on the incident date.

#### The Respondent's Case

Respondent testified in his own behalf.

#### Respondent

Respondent, a 12 year member of the Department, is assigned to Citywide Traffic Force (CTTF), which was formerly called Manhattan Traffic Task Force. Respondent confirmed that he currently works all over the City. He had been assigned to his current command since July 2002. His current assignment is in the Taxi Unit and he has been doing that since April 2012.

Respondent described his duties as enforcing taxi regulations, ensuring that all traffic regulations were obeyed by taxi drivers and also by the public. Additionally, his duties included ensuring that traffic flowed smoothly, so that people could get to their destinations without any issues.

During the time when the incident occurred, Respondent generally covered most of the City, from lower Manhattan to 96 Street. He stated that at any given time, there could be anywhere from 70 to 80 people working there during a single tour. Respondent's tour was from 4:00 p.m. to 12:00 a.m. There would be about four to five sergeants working during that time period.

When asked about the variety of job assignments within the CTTF, Respondent described the Bus Unit, Taxi Unit, and various safety checkpoints. The responsibilities of the officers who did the checkpoints included searching for any obvious violations by

people driving through checkpoint locations, in addition to looking for suspicious vehicles. At the Taxi Unit, the duties included ensuring that taxi drivers obeyed the Taxi and Limousine Commission rules, as well as New York State Vehicle and Traffic laws.

Respondent stated that part of his job function was to write and issue summonses. When he was in the Taxi Unit, he would write approximately 10 to 12 summonses per tour. He said that in addition to issuing these summonses, he would be required to testify in court. He used to testify in court twice a week, however, at the time of trial, he would testify once a week. He estimated that during the course of his career he had written thousands of summonses.

Respondent confirmed his involvement in the off-duty incident on March 10, 2009. At the time, he was separated from Person C and living at a different location than her. He was dating someone at the time named Person B.

Prior to the incident, he had crashed his car in a snowstorm and therefore needed a new car. Person C was willing to drive him to different dealerships even though they were separated.

When he returned to his home, he pulled up to one of the entrances of the building. When he got out of the car so that Person C could sit in the driver's seat and drive to her home, he noticed Person B walking by. He surmised that she had been waiting at the place for him. When he saw Person B, he told Person C to get in the car and leave. But by then, Person B had already walked up to them and said something along the lines of "Is this why I have been calling you all day and you didn't answer?" Person B was upset and she came up to Respondent in order to slap him. When Person C saw this, she also became upset. There was a physical confrontation between Person B and Person C, and they began scuffling with each other. During

this fight, Respondent was trying to separate Person B and Person C to avoid any physical injuries. He told them, "We need to break it up!" Additionally, he told Person C that she needed to stop, get in the car, and go home. There was a lot of commotion and this attracted the attention of people in the adjoining buildings. Respondent heard sirens in the distance.

Respondent testified that somebody had called 911, although it was not him, Person C, or Person B. He confirmed that he waited for the police to respond. He stated that by the time the police arrived, he had already broken up the fight. He stated that no one was arrested. He was interviewed by two officers from the [REDACTED] Police Department. He was not arrested at the time. He spoke to one of the officers and cooperated with them. Respondent confirmed that the [REDACTED] Police Department did not take any police action at the time. He confirmed that at that point, Person C and Person B went their own separate ways.

Respondent testified that he did not call the Operations Unit to let them know that he was involved in an off-duty incident. He did not do so because he was embarrassed about what happened. He called his command to get the night off because at that time he was working midnights. He did not tell his command what happened.

Respondent stated that at some point later, he was interviewed by the Department regarding the incident. He confirmed that he told them what transpired.

When asked about the July 15, 2010 incident, Respondent confirmed that he was working that day. He also confirmed that he had been questioned by Sergeant Conroy. Conroy asked him if he had written a summons to a certain taxi driver and he showed Respondent the summons. Respondent did remember the summons, but he could not recall the passenger who was in the taxi at the time. At the time of Conroy's questioning,

Respondent could not remember the passenger in the car. He confirmed, however, that subsequent to that date, his recollection improved.

When Respondent received the notification to go to court for the summons, he remembered the female passenger because every time he writes a summons, he makes a notation on the back of it indicating how many people are in the taxi including the driver. It is because of this notation that he remembered that there was a female passenger in the taxi.

He confirmed that when he went to appear in court for the summons, the driver was not present but he was represented by a lawyer. He confirmed that he then remembered pulling the driver over.

Respondent stated that he had seen the driver turning at the location of 42 Street and Lexington Avenue where there are two signs posted on light poles prohibiting right turns if one is traveling east on 42 Street onto Lexington Avenue between 7:00 a.m. and 10:00 a.m. and also between 4:00 p.m. and 7:00 p.m., Monday through Friday, except for buses.

Respondent stated that he was not in an RMP at that time, but on a foot post. A foot post can also be referred to as a fixed post depending on the location where one is assigned. Respondent confirmed that he had previously been assigned to that location many times before. When an officer has that assignment, he is supposed to stand at that specific location. It is up to the officer to decide how to position himself to better observe what happens at that location.

Respondent testified that he was covering the intersection and ensuring that drivers did not turn onto the street. On 42 Street, traffic moved in both directions. He could stop cars on either side from making a turn. He pulled over cars when he was on

foot, even though he did not have a siren telling people to pull over. To issue tickets to drivers who committed these traffic infractions, he would step onto the street, gesture with his hands for the driver to stop and then motion for the driver to pull over to the location where he stood. The driver was supposed to comply with his instructions.

Respondent confirmed that he was not getting into any pursuits, he was just signaling for someone to stop. On the date of the incident, he stopped the taxi. Once he approached the taxi, he saw that there was an elderly female passenger. He spoke to the driver, asked him for his license, and rate card, which served as registration for yellow taxis. He proceeded to inform the driver for the reason why he had stopped him. At that point, the passenger in the back seat began speaking. She asked Respondent why he was stopping the taxi. Respondent stated, "I wasn't obligated to speak to her, but out of courtesy, I stepped towards where she was [sitting] to listen to what she was saying." He informed the passenger that the driver knew that he was not supposed to make the turn there. He told her that it was not her fault, but if she had an issue with the sign, she could write a letter to City Hall. Respondent stated at no point did he tell the passenger that she could write a letter to the Mayor or call the Mayor.

When asked why did he tell her to write a letter to City Hall, Respondent stated that at that point there was nothing further he could tell the passenger to comfort her as far as the reason why he stopped the taxi. He confirmed that she was mad at him because he stopped the taxi, and he was explaining why the rule was there.

He testified that the passenger did not yell at him, nor did he say anything discourteous to her. Between writing the summons and his discussion with the passenger, the exchange took approximately seven minutes. He confirmed that he issued the summons to the motorist.

He stated that when he went to court for the summons, the lawyer actually won the case for the driver. He confirmed that this does happen from time to time.

Respondent said that when Conroy interviewed him, the interview was not an official one, but more of an informal conversation. When Conroy asked if he made the statement to the passenger telling her to write a letter to the Mayor or tell it to the Mayor, Respondent stated that he did not remember saying "talk to the Mayor." He did remember telling her that if she had a problem, she could write a letter to City Hall.

He stated that he told Conroy that on past occasions, he may have told someone to write a letter to the Mayor or tell it to the Mayor. However, he confirmed that he remembers what he said on that day.

When asked why he would tell a civilian to talk to the Mayor or write a letter to the Mayor, Respondent stated that they can do that if they have an issue with anything that goes on in the City. They have this option available to them. If a civilian wanted to make a complaint against him, Respondent stated that he would tell the civilian to "go ahead." He was not supposed to take the complaint personally.

In regard to the December 9, 2010 incident, Respondent stated that he was assigned to the holiday program. The holiday program was a 30 day program in the Rockefeller Center area. Rockefeller Center was very busy during the holiday season because of the Rockettes performing at Radio City Hall and the millions of tourists coming to the City either to see the show, or shop at Times Square or Rockefeller Center.

On the day in question, Respondent was assigned to West 53 Street and Sixth Avenue. His specific responsibility for that day was to "prevent back spill and manage the intersection." In order to prevent back spill, he does not allow vehicles to get stuck at an intersection by preventing cross-town vehicles from going across. He confirmed that

spill back would be when someone thought they could make a light, and they would go through, but ended up having part of their vehicle stuck in an intersection or crosswalk.

Respondent would go about preventing spill back by working with the sequence of the traffic light. By doing so, Respondent was able to stop them. Once a traffic light started changing from green to yellow, before it changed completely to red, he would give the cars a chance to stop so that they could not proceed past the intersection.

Respondent confirmed that he actually physically, even if someone has the light, could make the vehicles stop so that they do not end up stuck in the intersection.

Respondent stated that when he is assigned to that post, that would be his assignment for the entire day, eight hours of directing traffic. He would wear his regular police uniform and a reflective traffic vest. Respondent confirmed that on that post he was alone and on foot and did not have an RMP assigned to him.

When asked to describe the day itself, Respondent stated that it was probably one of the coldest days of the year. He confirmed that he remembered Mortis approaching him, although Mortis was not his direct supervisor for the day. Respondent did not know Mortis's assignment for the day, although he knew that he was not assigned to her. He stated that his direct supervisor for that day was Sergeant Keenan, whom he had seen after Roll Call.

Respondent stated that when Mortis approached him, he was doing his job at the intersection, preventing spill back. Respondent stated that when Mortis pulled up to him, she told him, "Officer, you need to be moving those double-parked cars." Respondent confirmed that he had seen Mortis approach other double-parked cars before approaching him. He stated that the first time he saw her RMP, she was talking to the driver of one of the double-parked cars.

Respondent described one of the vehicles that Mortis was approaching as a van that the food carts are hooked up to. Respondent stated that the location was a very popular location for food cart owners. Respondent stated that because he was assigned to that location for most of the holiday post, he was aware of how it operated. When asked about his observations based on his experience, Respondent stated that food vendors had different shifts so right before they changed shifts, they would pull up their vehicles and hook up the food carts. This could take some time to do. They would remove the cart and put in a new cart.

Respondent stated that he had previously observed the food cart vendors and had been working with them for a while so he did not hassle them because they did not interfere with his work. His job was not only to prevent spill back but also to ensure the safety of pedestrians as well as work with the businesses in the area, such as the Hilton Hotel.

Respondent confirmed that the food trucks have a right to be there. He confirmed that he would see them exchange one food cart for another and that they would be double-parked while doing so. Respondent stated that this, on average, could take anywhere from 10 to 15 minutes. He stated that if he wanted to, while they were doing this, he had the authority to tell them to go away or he could issue them a summons.

Respondent stated that he had been working at that post since the beginning of the holiday season. He explained that the way it worked with the holiday program was that when an officer begins to work at a particular location or intersection, he would most likely remain there. The exception would be if an officer would have to be switched if someone has a day off. He confirmed he knew who the drivers were and they knew who he was.

When asked what was he thinking when he saw Mortis walking up and taking action against them, Respondent stated "I didn't think much of it."

Respondent confirmed that there were other officers in his unit who were specifically assigned to deal with double-parked cars. There were three-wheeled scooters assigned to move vehicles that were double-parked on Sixth Avenue or buses that were stopping without permission to do so because they were mobile. They had the flexibility to do this because they were in a vehicle.

Respondent described the significance of mobility when dealing with double-parked cars as an increased ability. When one is assigned to the intersection, he is not assigned to moving vehicles.

Respondent explained that once Roll Call was made, it would be up to the Captain and then one's immediate supervisor whether one was assigned to the intersection or to scooter detail. Knowing his responsibilities, Respondent explained that to go over to the double parked cars he would have to walk about 30 to 35 feet from the intersection. He confirmed that if he were to do so, he would not be able to prevent spill back. He confirmed that the only way to prevent the spill back is to physically stand there and tell the people to stop, even though the light is yellow or green for them. He confirmed that there were no problems with his intersection or with spill back when he saw Mortis there.

When Mortis came up to Respondent, she told him, "Officer, you need to be moving those double-parked cars" and she also said "Get in the game."

Respondent testified that he was "in the game" because he had been standing out there in the cold all day without leaving his post. Respondent felt that Mortis's comments were demeaning which upset him.

Respondent confirmed that Mortis was sitting in the car when she made the comments. He responded by telling her that his job was to prevent spill back and control the intersection, not to move double-parked cars. He testified that moving double-parked cars was a job “for the motor vehicles, for the scooters.” Respondent stated that he did not think Mortis liked his answer because she pulled up, parked the Department vehicle, and then after a few minutes in the car approached him. Respondent confirmed that Mortis was alone. He stated that she reiterated to Respondent “the fact that she was ordering [him] to move double-parked cars and that [he] was refusing” this order, which was insubordination. At this time, the cars had already moved. There were no double-parked cars.

Mortis told Respondent that he was being insubordinate. When Respondent asked how he was being insubordinate, Mortis kept speaking, saying that she had told Respondent to do something and he did not do it. Respondent told her that this was not true because he was doing his job and she was berating him in public.

Respondent stated that Mortis was speaking loudly, to the point where people standing on the side of the street were watching the scene and looking at him. Respondent felt slightly embarrassed. Respondent confirmed that at no point did he tell Mortis, “This is bullshit, you know this won’t fly.” He confirmed that he never used curse words at all.

Respondent stated that Mortis told him she was going to write him up and give him a CD. He told her that if she would write a CD, he would write a complaint because her behavior toward him was unprofessional. Respondent confirmed that he was not trying to unfairly threaten Mortis at that point. He told her that he would write a complaint against her because he felt that she was being unfair to him. He stated that he

was fairly loud when he told her this. He agreed that the volume of his voice was about the same as her voice. He testified that he did not tell her "get away from me." Regarding whether he gestured with his hands for Mortis to get away from him, Respondent stated "No. When I talk, I do tend to gesture with my hands, but I never tried to shoo her away or anything like that."

Respondent confirmed that at some point, Mortis walked away from him. He confirmed that he was aware that a supervisor came on the scene later. He stated that he was not removed from his post. He confirmed that he was eventually officially interviewed by the Department about the incident on March 24, 2011. He did not file an official complaint against Mortis because personally he did not believe in "tit for tat." He testified that he was never taken off that post. He was assigned to the same post as well as to other posts close by.

He testified he had pleaded Guilty to being late on several occasions. He confirmed that his lateness occurred between late November 2010 and mid March 2011. Respondent agreed that he was late on nine occasions for about five minutes. He then confirmed that it could have been more than that, up to 20 minutes or so. Respondent explained that when someone is late at the Command, they have to fill out a Leave of Absence Report (PD-28), which is a "28." Respondent confirmed that this is so that the person does not get paid for the time they are not working. He confirmed that he completed a PD-28 when he was instructed to do so. When asked why he was late during that short period of time, Respondent said it was a combination of bad-time management on his part and "not starting out from home on time." He confirmed that he has, since then, corrected the problem.

During cross-examination, Respondent testified that he had not told Mortis to “get away.” After being directed to refresh his memory by reading the transcript of his official Department interview, Respondent was asked whether he recalled making a statement regarding whether or not he told Mortis to get away. Respondent explained that he did not speak disrespectfully toward Mortis. Respondent stated, “The intersection was still busy because we were standing right in the middle of the intersection. What I meant for her to step aside, not only because it was dangerous for me, but also because it was dangerous for her” to stand in middle of the busy intersection. He did not mean “get away from me” when he gestured with his hands. Respondent confirmed that he recalled telling Mortis to get away, but it was not said in a disrespectful way. However, he did say those words. He confirmed that he had never told Mortis that moving the cars was not his job. Respondent agreed that he may have told Mortis that moving the vehicles was “somebody else’s job, the scooter people.” He confirmed that there was not a real big difference between telling a supervisor something is not his job as opposed to telling the supervisor that the job is someone else’s.

Respondent stated that when Mortis confronted him it was late in the evening and he had been working all day. Usually he began his tour about 2:15 p.m. and finished at 10:50 p.m. Respondent stated that he saw the double-parked cars when the vendors switched every day that he was there. He confirmed that he could have issued them a summons for blocking the intersections.

When asked to describe the location of the food vendors, Respondent stated that Sixth Avenue runs northbound. There are six lanes of traffic. West 53 Street is a westbound street with three lanes, a parking lane, a lane for thru traffic and a turning lane. He confirmed that there is only one lane that is not a turning lane and not a parking

lane that could go straight through 53 Street. Respondent confirmed that the vendors were blocking the one lane that was for traffic to flow. He confirmed that when Mortis came, she observed two vehicles blocking the one open lane for traffic. When asked whether those were the two vehicles that Mortis told him to move, Respondent stated that Mortis had already told the vehicles to move before she came to him. When Mortis came to him, she told him that he ~~needed~~ to be moving the cars. He testified that he did not tell her that this was someone else's job, but that his job was to prevent spill back and control the intersection. He testified that he did not think telling Mortis that his job was to prevent spill back was the same thing as telling her that what she asked him to do was not his job.

During cross examination, he was upset when Mortis drove up to him and said "get in the game," in a condescending tone because he felt as though she was telling him that he was not doing his job. He felt that he was doing his job.

Respondent confirmed that he was on a fixed post that day. He explained that a fixed post was a stationary post. Respondent stated that his post was a complicated and busy post for one person but he felt that he was capable enough to handle it. He stated that the Hilton Hotel was located on the corner of the intersection. The Hilton had a lane coming out of it that taxi drivers used. Responded stated that a person has to pay attention to all that is going on in this intersection. Respondent confirmed that the location where the street vendors were blocking the one lane of traffic that was moving was part of his assigned area. He confirmed that part of his job was to make sure that all the traffic regulations are obeyed. He agreed that double parking is considered a traffic violation, however, he noted that officers have discretion.

Respondent stated that if Mortis had told him to move the vehicles, then it would be a direct order. However, he testified that she did not tell him to go move the vehicles. He stated that even though he was doing spill back on that day, if Mortis had directed him to move the vehicles, he would have had no problem in doing so. However, Respondent stated that Mortis moved the vehicles prior to coming to him.

Respondent said that the food vendors switched in three shifts. Approximately at 5:00 p.m. and 6:00 p.m., they would make the change. He confirmed that this was approximately around the time when Mortis came to him. When asked whether it was fair to say that he had chosen to give the vendors a break because he had become familiar with them from working the same post, Respondent stated that he knew how the vendors worked and that they were not creating a problem. Respondent agreed that blocking one lane of moving traffic by being double parked in the intersection, did not create a problem in the intersection.

Respondent acknowledged that he recalled being warned on more than one occasion that if he continued to be late, he would be subjected to discipline. He confirmed that even though it was only five to ten minutes late each time, he had been informed that this was becoming a problem. Despite the warning, he was still late on multiple occasions.

When asked about the physical alteration between Person C and Person B, Respondent stated that at the time of the altercation, he had been separated from Person C for about three years. He was with Person C looking to purchase a car and Person B had been calling him all day but he did not pick up her calls. When they arrived at the scene, Person C and Person B got into a physical altercation. He confirmed that he was questioned by the [REDACTED] Police Department. Respondent called his

Command in order to request the day off. He was told to come to work. Respondent acknowledged that he did not mention why he wanted the day off when he called the Command. He confirmed that he worked his full tour that night and that he encountered supervisors during his tour. He agreed that he did have an opportunity to tell a supervisor that he had been involved in a police incident.

Respondent eventually told Person C that she had to leave the scene. When asked whether Person C left willingly or he had to physically put her in the car and tell her to leave the scene, Respondent stated that he “kind of pushed her along.” He stated that the physical altercation lasted for about five or six minutes. He did not know that 911 was called until he heard sirens.

Respondent stated that Keenan had visited him before he got to his post. When asked if Keenan or any direct supervisor ever tell him “You do what I tell you, and if another sergeant tells you to do something else, you can choose to disobey it,” Respondent stated, “No.” Respondent agreed that he is aware that he is required to follow a lawful order given to him by a supervisor.

He confirmed that he remembered Mortis telling him that he was going to get a CD and that he told her he would make a complaint against her for harassment. He stated that he did not recall telling Mortis “this is bullshit.”

Upon redirect examination, Respondent confirmed that when he “shooed” Mortis away, there was a dangerous condition. He explained that he was concerned about safety because prior to Mortis arriving, two vehicles had almost hit him while he was standing in the same spot because the drivers were not paying attention. He was directing them to drive straight, but they chose to turn. Respondent stated “I had to actually jump out of

the way to avoid getting hit." Respondent confirmed that this was a normal occurrence in that intersection.

### FINDINGS AND ANALYSIS

#### Disciplinary Case No. 2010-2261

Respondent stands charged herein in that on or about March 10, 2009, while off-duty at a location known to the Department [REDACTED], having been involved in a police incident, did thereafter fail to promptly notify the Operations Unit as required.

Respondent pleaded Guilty to this Specification. He acknowledged that on the incident date, he was separated from Person C and was dating someone else, Person B.

Respondent had previously crashed his car in a snowstorm and Person C agreed to drive him to different dealerships to look at vehicles. When he returned home and exited Person C's vehicle so that she could take the driver's seat, Person B was waiting for him. Person B was yelling and approached Respondent to slap him. Person C got upset and an altercation between the two women erupted. Respondent attempted to separate them.

Someone called 911 other than the parties to the incident and Respondent waited for the police to arrive. He was interviewed by two [REDACTED] police officers, yet Respondent failed to report the incident to Operations. Respondent acknowledged that he reported for duty later that evening and had an opportunity to make a notification about the incident, but failed to do so.

Accordingly, Respondent having pleaded Guilty, is found Guilty.

Disciplinary Case No. 2011 3829Specification No. 1

Respondent stands charged herein in that while on duty and assigned to the Citywide Traffic Task Force (CTTF) on or about July 15, 2010, was discourteous to a civilian, Person A, to wit: said Police Officer stated to her, "TELL IT TO THE MA YOR!"<sup>1</sup>

Evidence adduced at trial established through the testimony of Conroy was that he interviewed the complainant, Person A. Person A was a passenger in a New York City taxi and appeared to be upset when her taxi driver could not make the turn where he needed to for her to get home quickly. She also was unhappy with the detours. In addition, Respondent, who was working in CTTF at the time, issued a summons to the taxi driver for making an illegal turn. Person A had a discussion with Respondent at that time alleging that the summons was unlawful. Respondent informed her that the summons was legitimate because the taxi driver could not legally turn where he did. When Person A inquired as to how taxi drivers are supposed to make a living with all of the restrictions in the City, Respondent said, "Tell it to the Mayor."

Conroy testified that he investigated the summons and the discourteous remark. With respect to the summons, he found it to be issued correctly. He asked Person A if she understood that the summons was legitimate and she acknowledged that she did after her discussions with Respondent. She just felt bad that the taxi driver received the summons trying to get her home. Conroy also asked her if she was offended by the "tell it to the Mayor" comment and she replied, "No." She explained that she wanted to help

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<sup>1</sup> As printed in the Charge and Specification.

her taxi driver who was a nice man and she believed he tried to get her home as fast as he could especially since she was in a hurry.

During cross-examination, Conroy acknowledged that the Mayor and Police Commissioner have open policies toward receiving letters from the public. He stated that he was not sure that had Respondent said to Person A, "Write a letter to the Mayor," that that statement would have been acceptable. He explained that it depended on the context. He further explained that even though Person A was not offended by the comment, he thought it was inappropriate.

The Court finds that there is no basis to substantiate this allegation against Respondent. It appears that Person A, in her disappointment in not getting home as quickly as she liked, filed a complaint listing the disputed summons and courtesy. Upon investigation, however, Conroy learned that Person A understood that the summons was properly issued for an illegal turn and that she also was not offended by the comment made by Respondent. Simply because Respondent acknowledged that he made the remark, does not make it misconduct. Notwithstanding, there was no evidence presented at trial that Respondent raised his voice when he made the comment to Person A. This is despite the fact that the Assistant Department Advocate (Advocate) drafted the statement in all capital letters. The statement, in and of itself does not amount to a discourteous remark to a member of the public. It is clear from the testimony that Respondent had a conversation with Person A during the traffic stop and he was responding to her question.

Accordingly, Respondent is found Not Guilty of Specification No. 1.

Specification No. 2

Respondent stands charged herein in that while on duty and assigned to the Citywide Traffic Task Force, on or about December 9, 2010, was discourteous to Sergeant Pamela Mortis, Tax# 904628, to wit: said Police Officer stated: ‘This is bullshit! You know this won’t fly! You must have a problem with me! If you give me a complaint, I will give you one too! Get away from me!” and made a gesture with his hands for Sergeant Mortis to get away from him.

Evidence adduced at trial through the testimony of Mortis was that in 2010, she was assigned to CTTF as a patrol supervisor. Her duties included insuring that traffic moved smoothly and that police officers performed their duties as instructed. In addition, she visited locations within the Command to ensure that members were performing their tasks. Mortis testified that on the incident date, Respondent was assigned to an adjacent post that she was driving by and encountered him at the intersection. She explained that she was assigned as the patrol supervisor on Fifth Avenue. Given the fact that on December 9, 2010 she was assigned to a holiday post, her duties included making sure that traffic was moving well in the vicinity of Radio City Music Hall. As she drove in a marked RMP, she noticed that traffic was not moving well on 53 Street. She drove down the street and observed that there were several double parked cars buying food from a vendor which was obstructing traffic. Mortis, while still inside of her vehicle, approached Respondent who stood at the intersection, and asked him if he could move the double parked cars.

Mortis testified that Respondent said, “That’s not my job and I’m not doing that,” while rolling his eyes and sucking his teeth. Mortis said she was in disbelief, so she parked her RMP and approached Respondent on foot. She advised Respondent that

moving the cars was his job and he was disobeying a direct order to move the cars. She also advised him that due to his insubordination, she would be issuing him a CD. Mortis stated that Respondent replied, "This is bullshit," as he "[T]old me to get away by throwing up his hand and batting me away." In addition, Respondent told her that if she gives him a CD, he would give her a complaint.

Mortis went back to her RMP and immediately called Lieutenant Witt and Captain Esposito and informed them of what had just transpired. Mortis said that they arrived at the scene and she had a conversation with them. During cross-examination, Mortis acknowledged that she was not Respondent's direct supervisor on the incident date, but that she was still a supervisor in the Command and could give directives to members who were subordinates assigned in her command.

Respondent argued that on the incident date, Mortis was not his direct supervisor and he had reported to his direct supervisor at roll call. He explained that on December 9, 2010 he was assigned to the holiday program. It was a 30-day program designed to address the millions of tourists who passed through the City particularly in the area of Radio City Music Hall, Times Square and Rockefeller Center.

Respondent explained that since he was familiar with the area, he was also familiar with the food cart vendors who worked in the area. He explained that during the day, they would exchange one food truck for another while changing shifts and they would be double-parked while doing it. Since he knew the routine, he would not interfere with the vendors when they made this switch. He further explained that he did have the option to move the vehicles or issue them a summons.

Respondent testified that on the incident date, he was assigned to the intersection and was not responsible for moving double-parked cars. He explained that there were

police officers in three-wheeled scooters who were mobile and who could move the cars. He further explained that if he left the intersection and moved double-parked cars, he would not be preventing the “spill back” of traffic that would occur at the intersection. He said to prevent spill back, he had to stand at the intersection and tell drivers to stop even when their light was yellow or green. Respondent stated that the intersection was controlled and there was no spill back when Mortis arrived.

Respondent said that Mortis told him, “Officer, you need to be moving those double-parked cars.” She also told him to “get in the game.” Respondent said that he was “in the game” because he was standing out in the cold all day. He explained that he was doing his job, never left his post and that Mortis’s remark was demeaning to him. He said he advised her that his job was to prevent spill back and control the intersection not move double-parked cars. He further explained that he had a post he was assigned to and did not want to appear that he was not manning his post which was to stand out in the cold all day. Respondent stated that he felt Mortis did not like his answer because she parked her vehicle and ordered him to move the cars again and she informed him that his refusal amounted to insubordination. Respondent said that the double-parked cars had already moved. He reiterated to Mortis that moving the cars was not his job and that she was berating him in public. Respondent said the public was watching and looking at him.

Mortis told Respondent that she would issue him a CD. Respondent said he told her that if he received a CD, he would write a complaint because her public scolding was unprofessional. Respondent acknowledged that he used a fairly loud voice in responding to Mortis, the same tone that she used toward him. He denied telling her to get away from him or gesturing with his hands to do the same. He stated that he did observe a

supervisor arrive on the scene. Later he was interviewed regarding the matter and he stated that he never filed a complaint against Mortis.

Respondent was insubordinate to Mortis and acknowledged that he spoke with her in a raised voice. Although he denies that he told her to go away or used hand gestures, the fact that he remained at his intersection post directing traffic despite an order to do otherwise, may have been rightfully interpreted by Mortis as a gesture for her to go away. Respondent was given a direct, unambiguous order to move the double-parked cars and he chose to ignore it stating in a loud tone that it was not his job. It is a generally accepted principal of law to, "Obey now and grieve later," [See Ferreri v. New York State Thruway Authority, 62 N.Y.2d 855 (1984), Health and Hospitals Corporation EMS v. Quarles, OATH Index No. 323/96 (Decided February 6, 1996)]. Absent a showing that the order put Respondent's health and safety in jeopardy, he had a duty to comply with the order [See Department of Sanitation v. Cunningham, OATH Index No. 1332/02 (Decided November 2, 2002)]. Even if Respondent felt that the way Mortis gave him the order was demeaning, he had a means for recourse following compliance with the order.

Accordingly, Respondent is found Guilty of Specification No. 2.

### Specification No. 3

Respondent stands charged herein in that while on-duty and assigned to the Citywide Traffic Task Force, on or about and between November 30, 2010 and March 18, 2011 was late for Roll Call on nine occasions, causing entries to be made in the Minor Violations Log.

Respondent pleaded Guilty to this Specification and acknowledged that he had been late on several occasions between November 2010 and mid March 2010. He stated

that it was a combination of bad time management on his part and not starting out from home on time. He explained that when he was late, he completed a PD-28 when directed to so that he would not be paid for time when he was not at work.

Accordingly, Respondent having pleaded Guilty is found Guilty.

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on September 29, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to failure to promptly notify the Operations Unit that he was involved in a police incident [REDACTED]. Respondent explained that he was neither the victim nor aggressor in the incident and was trying to separate Person B from Person C as they commenced a physical altercation against each other. He further explained that he was embarrassed about the incident and this lead to his failure to report the incident.

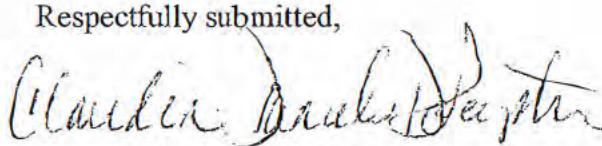
The Patrol Guide is clear that members of the service involved in off-duty incidents have a duty to report the incident forthwith. It is noted that Respondent was not the aggressor in this matter, but that he was trying to break up the altercation. While Respondent was embarrassed about the matter, Respondent reported for duty later that night and had an opportunity to report the incident as required.

Respondent was also found Guilty of being discourteous to Sergeant Mortis and Respondent pleaded Guilty to being late to Roll Call on nine occasions between November 30, 2010 and March 18, 2011.

The Advocate asked for a penalty of 15 suspension days, 30 vacation days and dismissal probation in this matter. To support this penalty, the Advocate cited Disciplinary Case No. 84044/08 approved May 24, 2011, where a nine year Police Administrative Aide (PAA) with no prior disciplinary record forfeited 30 suspension days for insubordination to a sergeant. In the course of the sergeant investigating a remark that the PAA made in the Command, she replied, "I don't hear you, I don't want to talk to you, you have been harassing me all day, I'm calling IAB." This courtesy took place in the station house behind the front desk.

In the instant case, Respondent's courtesy took place during the holiday season in the middle of Rockefeller Center in full view of the public. In light of Respondent's service record, insubordination and Guilty pleas, it is recommended that Respondent be DISMISSED from the New York City Police Department but that his dismissal be held in abeyance for a period of one year pursuant to section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at any time without further hearings. I further recommend that he forfeit 45 vacation days.

**APPROVED**  
RAYMOND W. KELLY  
POLICE COMMISSIONER  
JAN 14 2013  
*Raymond W. Kelly*

Respectfully submitted,  
  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER CHINTUA ALOZIE  
TAX REGISTRY NO. 926497  
DISCIPLINARY CASE NOS. 2010-2261 & 2011-3829

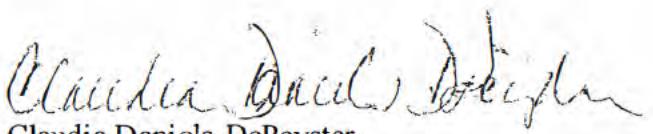
In 2009, Respondent received an overall rating of 3.5 "Above Competent" on his annual performance evaluation. In 2010 and 2011, he received a rating of 3.0 "Competent." Respondent has received one Excellent Police Duty Medal in his career to date.

[REDACTED]

[REDACTED]

On December 29, 2006, Respondent received Charges and Specifications for intending to cause physical injury to another person, to wit: grabbing a person by the throat causing injury. Respondent pleaded Guilty and accepted a penalty of 32 days time served on suspension and to cooperate with counseling. Respondent later received a Schedule B Command Discipline and the loss of three vacation days for failing to complete the six-month anger management program due to his termination from the program for excessive absences.

For your consideration.



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner Trials